

**RESPONSE TO THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS' OBJECTION TO CREDITOR DANIEL A.
FRISHBERG'S MOTION FOR RELIEF FROM THE AUTOMATIC
STAY**

INTRODUCTION

The UCC has requested that Your Honor sustain the debtors motion. I urge the court to overrule both the debtors and UCCs motions for the following reasons, which I explain in detail below: (a) their mistaken inclusion of me into the bankruptcy proceedings; (b) violations of Celsius' fiduciary duty to me as a client; (c) unnecessary waste of administrative resources that are enormous in comparison to Celsius' debt to me; (d) exempting me from bankruptcy would not cause a flood of people suing Celsius because no creditor is in the same position as me

Legal Arguments

I instructed Celsius in writing to close my account, and relied on their rules for effectuating my instructions. I presumed that Celsius complied with my instructions, but they failed to follow their own written guidelines, which I relied upon to my detriment (loss of \$5,000 and court-related expenses). My case should be treated separately from bankruptcy for that reason. Specifically, under section 19. B. of the TOS I have the right to close my account by simply telling Celsius to do so (which was done on the 5th of July, see Exhibit A): "If you want to terminate your Celsius Account with Celsius, you may do so by notifying Celsius at support@celsius.network."

The way the TOS is worded means that my instructions Celsius to close the account was all that is required for the account to be closed. From the moment I sent that email, I believed that my account was closed (per the TOS). In fact, Celsius failed to do so. This puts me in a different situation from the other bankruptcy creditors, because to the best of my knowledge no other individual in the bankruptcy proceedings had instructed Celsius to close their accounts before the bankruptcy filing. In other words, I terminated any and all business relationships with Celsius before the bankruptcy, and should not be involved in this process.

In a nutshell, the UCC is attempting to force me to be a part of their bankruptcy case/estate when I should not be a participant. Celsius's TOS specifically states that small claims court is an option for me to pursue. "**27. C. Small Claims Court**. Notwithstanding the foregoing, you may bring an individual action in the small claims court of your state or municipality if the

action is within that court's jurisdiction and is pending only in that court¹". This is exactly the remedy I am now seeking.

From a legal perspective, my relationship was terminated with Celsius after I sent an email on the 5th of July (see Exhibit A, below), and the entirety of the contract was breached by Celsius when Celsius (again, on the 5th of July) violated their own TOS by refusing to close my account or inform me of their non-compliance. This was formally breached on July 11th when Celsius paid me interest contrary to my specific instructions and contrary to their own Terms of Service (which states that interest stops immediately after I request to close the account). Celsius went as far as deciding to lie by sending me a misleading statement (see Exhibit D) which is considered fraud. According to the TOS, I am able to instruct Celsius to make transfers/transactions (see Exhibit E). Celsius effectively misappropriated my assets by transferring them to the bankruptcy estate when they had no right to do so (as well as keeping my assets for almost two months now with no legal right/contract to do so).

Celsius also committed fraud by intentionally hiding from their depositors that they were insolvent since 2021. This happened on dozens of occasions when Celsius stated that everything was fine, and specifically by creating promotions to entice more people (such as myself) to deposit funds. After the SEC and Celsius had a dispute in early 2022, Celsius stated that after April² 15th only accredited investors would be allowed to deposit money into the "earn" account, because unaccredited investors do not understand the risks of doing so. This (and the window to allow unaccredited investors to deposit more funds) was designed to get people to deposit more money into the account due to the fear of missing out. This also prevented me from withdrawing as I would be unable to access this service again if I withdrew. I was not informed about the full risks. Instead Celsius lied, saying that the risks were close to non-existent and that Celsius was almost as safe as a traditional bank (I am paraphrasing the CEO, Alexander Mashinsky³). Celsius did this while being knowingly insolvent. Now Celsius is requesting that the court shield them from the illegal acts they did before bankruptcy.

"Open the floodgates"

The debtors and the UCC erroneously assert that my case could set a precedent to allow other creditors to be able to sue, causing Celsius to be unable to deal with the massive amount of lawsuits. That is not true. Specifically, Celsius stated: "The majority of the Debtors' creditors have unsecured claims exactly like Frishberg," which is false. I am not an unsecured creditor, and I should not be a creditor at all (I instructed them to close the account before the bankruptcy

¹ <https://celsius.network/terms-of-use>

² An earlier version of this document stated that it was March.

³ "We are not taking tremendous risk" at 52 minutes and 20 seconds
<https://m.youtube.com/watch?v=YaNXa4yLv-w&t=51m51s>

proceedings were filed, which they willfully ignored). My crypto should have been returned to me after I closed the account on July 5th. They refused due to the limitations on withdrawals and transfers, but Celsius failed to announce any limitations on the closure of accounts (which would probably be illegal). Since I should not be a “creditor,” the other legitimate creditors would not be able to “flood the gates” that are closed to them.

If Celsius had only followed my written instructions, my assets would have been moved into the “Custody” account, because that is the default mechanism set out in their TOS (before a withdrawal), and afterwards the “Custody” account would have been closed and my assets withdrawn. The breach of contract by Celsius (failure to follow my instructions) nullified their legal authority to continue holding onto my crypto. In their argument, Celsius is correct in my position (in Exhibit A, B and C) when they state: “Frishberg alleges that, following the Pause, he asked Celsius to close his Earn account but that Celsius refused to do so, and also prevented him from withdrawing assets”. I confirm this position: my assets do not belong in the bankruptcy estate. Celsius maintains that “extraordinary circumstances [must be] established to justify such relief”, and I agree. In my case, the “extraordinary circumstance” is their failure to comply with my instructions, resulting in an erroneous transfer of my assets to the bankruptcy estate. This “extraordinary circumstance” distinguishes me from the other creditors. To put it simply, I do not belong in the bankruptcy proceedings, so their entire objection is irrelevant and should be overruled.

Celsius mistakenly maintains that: “The majority of the Debtors’ creditors are Celsius customers just like Frishberg”. When they say that lifting the stay for me would prevent “equal treatment among similarly situated creditors and an orderly process”, they are absolutely wrong: to the best of my knowledge there are no similarly positioned creditors that demanded the closing of the accounts before the bankruptcy proceedings started. In fact, from a logical perspective, Celsius is currently holding my assets illegally, and I want to set things right.

Celsius argues that “resolution of the proposed litigation would come at a cost to the Debtors, adversely impacting the bankruptcy estate as an administrative expense”. On the contrary, I believe that their lawyers have already wasted far more money on my case than the mere \$5,000 that I am owed.

The solution is simply to order Celsius to do what they should have done on July 5th, 2022, when I requested to close the account: acknowledge that I should have never been included into the bankruptcy proceedings and simply return my assets. Alternatively, Celsius will end up spending far more money on high-priced lawyers than it would cost to simply return the money that they stole from me. If you ask Celsius’ lawyers about their fees, which were wasted on me, you will see that both the debtors and the UCC have each spent far more than they owe me.

Finally, Celsius (according to their deal with the SEC) maintains that I am a non-accredited investor and should have never been allowed to participate in the “earn” program, yet they still grandfather-claused me into the “earn” program and did not remove me after the deal with SEC, and my repeated requests. Celsius also misled Your Honor (committed perjury) in your courtroom when Mr. Patrick Nash stated that “it was no longer possible to be a participant in the Earn program if you were a US-based non-accredited investor⁴” (see Exhibit F). In fact, this is not true: I am currently a US-based non-accredited investor with an “earn” account despite my repeated attempts to close it.

Conclusion

In conclusion, I respectfully request that Your Honor order Celsius to do what should have been done on July 5th and return all of my assets like they were legally obligated to. That is why I urge the court to overrule both the debtors and UCCs motions for the reasons stated above, namely: (a) their mistaken inclusion of me into the bankruptcy proceedings; (b) unnecessary waste of administrative resources that are enormous in comparison to Celsius’ debt to me; (c) exempting me from bankruptcy would not cause a flood of people suing Celsius, because to the best of my knowledge no other individual is in the same position as me (neither I, nor my assets belong in the bankruptcy court due to Celsius’ “failure to honor [Daniel Frishberg’s] demand to close his Earn account following the Pause in July 2022⁵”, but the so-called “Pause” happened in June, not July, which is a crucial difference).

Alternatively, if Your Honor decides to sustain the debtors’ and UCC’s objections, I humbly request to be allowed to continue my case in your court in an adversary proceeding. I also would greatly appreciate a fee exemption waiver and refund of all out-of-pocket court expenses I incurred in pursuing this unnecessary case in various court rooms, because as a college freshman, it is a large strain on my limited financial resources, especially given the size of my claim.

Last, but not least, I believe that it is both a waste of the debtors’, the UCC’s and the court’s resources. My claim totals about \$5,000, and the debtors have already spent several times that amount on this matter. If the debtor’s motion is sustained, it would cost them far more money to litigate this case in your bankruptcy court. For that reason (as well as the fact that my assets shouldn’t even be a part of these bankruptcy proceedings, because I instructed Celsius to close my account before the bankruptcy filing, and they ignored my instructions, breaching the contract), I respectfully request that the court denies/overrules the debtor and UCC’s objections

⁴ Quoted from Mr. Patrick Nash, from the court record, as seen in Exhibit F.

⁵ A quote from THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS’ OBJECTION TO CREDITOR DANIEL A. FRISHBERG’S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

and grant my motion for relief from the automatic stay, or simply release my assets to me, like Celsius should have done on July 5th, 2022. Thank you, Your Honor.

Exhibit A:



Customer Care Expert (Celsius Network)

Jul 5, 2022, 23:32 UTC

Hello Daniel,

Thank you for reaching out to the Celsius Customer Care Team. Although we are sad to see you go, we understand your desire to remove your account from the Celsius Platform.

We have had the opportunity to review your account and it appears you still have a significant balance remaining. As recently announced to the community, Celsius has paused all withdrawals, swaps, and transfers between accounts. At this time, we are not able to process an account deletion until we have restored the functionality of withdrawals.

We know this is not an easy situation for you, and we apologize for the inconvenience this may cause you. Please keep in mind that Celsius is continuing its operations, and our objective is to restore withdrawals, swaps, and transfers as quickly as possible. However, the process will take some time, and there may be delays.

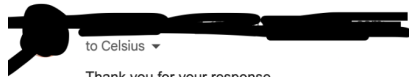
We will share further information on this topic when it becomes available.

For additional assistance, please reply to this email or simply call us at 1-866-HODL-NOW (1-866-463-5669). We are looking forward to your call!

Best regards and HODL on!

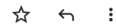
Read our FAQs and learn more from our Help Center <https://support.celsius.network/hc/en-us>

Exhibit B:



to Celsius

Tue, Jul 5, 7:46 PM



Thank you for your response,

If a withdrawal is unavailable, please move my entire portfolio to the custody wallet. I no longer want to earn any interest or assets due to the increased risk. A risk that was not disclosed to me. I was under the impression that you would be loaning it out in overcollateralized loans. I no longer want an account at Celsius. Per your TOS it says one of the requirements is to have an active account. I do not want it. Therefore the account must be closed and a withdrawal processed. And to quote from your TOS "Subject to these Terms, for any of your Eligible Digital Assets that you elect to utilize in the Earn Service (if available to you), you have a call option on all loans made to Celsius to demand immediate, complete or partial repayment of any loan at any time through (i) transfer to a Custody Wallet, if available to you, or (ii) a complete or partial withdrawal of Eligible Digital Assets at any time. Such repayment will terminate in whole or in part your loan to Celsius and you shall no longer accrue Rewards on the amount of loans as of the time of your exercise of the call option. Celsius initiates the withdrawal process immediately following a withdrawal request when possible; however, we may require up to three (3) days after you submit your withdrawal request to process the withdrawal"

I hereby terminate my loan to you. And demand a repayment in full immediately to my custody wallet. For the record: it is 7:46 PM EST, and I Daniel Anatoly Frishberg exercise my right to recall/demand that the money be no longer loaned.

Daniel

...

Exhibit C:



Customer Care Expert (Celsius Network)

Jul 6, 2022, 02:37 UTC

Hello [REDACTED]

We understand the reasons and urgency behind your request. However, as I mentioned earlier, Celsius announced the pause on withdrawals, Swap, and transfers between accounts (this includes internally from Earn to Custody) to attempt to stabilize our liquidity and operations.

In that same section of the Terms of Use you referenced, it also reads; Celsius and our third-party partners may experience cyber-attacks, extreme market conditions, or other operational or technical difficulties which could result in the immediate halt of transactions either temporarily or permanently. Provided that Celsius has taken reasonable commercial and operational measures to prevent such events in technical systems controlled by Celsius, Celsius is not and will not be responsible or liable for any loss or damage of any sort incurred by you as a result of such cyber-attacks, operational or technical difficulties or suspensions of transactions. Withdrawal limits based on amounts and/or frequency may apply from time to time, based on legal, regulatory, AML, and/or security considerations. Our policies and procedures may require additional security and/or compliance checks that require additional time to complete.

Our team is working diligently around the clock and we will continue to update the community and our clients as and when it becomes appropriate. I have provided our [Terms of Use](#) for your convenience.

For additional assistance, please reply to this email or simply call us at 1-866-HODL-NOW (1-866-463-5669). We are looking forward to your call!

Best regards and HODL on!

Read our FAQs and learn more from our Help Center <https://support.celsius.network/hc/en-us>

Exhibit D:



Celsius Network

to me ▾

Aug 1, 2022, 8:43 AM



##- Please type your reply above this line -##

Your request ([#1034930](#)) has been updated. To add additional comments, reply to this email.



Customer Care Expert (Celsius Network)

Aug 1, 2022, 12:43 UTC

Hello Daniel,

Thank you for being patient.

We respect your decision to close an account with Celsius, and we would gladly assist you with this request, however, the accounts with coins can not be subject to deletion as long as the funds are on them.

While we understand that you requested coins to be moved from your Earn to your Custody account, we would like to kindly inform you that even in a regular circumstances Celsius can not transfer assets in behalf of the users from one to another account as only the account owners are able to perform such action by themselves. Additionally please be reminded that at the time of your request a pause on withdrawals and transfers between the accounts has been implemented as a part of our efforts to stabilize our platform and protect community members.

Considering that Celsius is currently undergoing a restructuring under Chapter 11 of the U.S. Bankruptcy Code all account activities including the coin transfers and withdrawals will remain paused until further notice, and at this moment, deletion of your account is not an option, since your coins are still there. This will however, allow you to file a claim through Chapter 11 process which is why is important for you to find more about the process and details on how to file your claim at <https://cases.stretto.com/celsius>.

Exhibit E:

By entering into any CelPay transaction you explicitly authorize Celsius or its Affiliates to deduct such amounts of Eligible Digital Asset as you instruct us to transfer to another user from your Celsius Account, and to be added to the balance of the Celsius Account of such other User. Conversely, by accepting any CelPay transaction from another User you agree that the amounts of Eligible Digital Asset sent to you shall be added to the balance of your Celsius Account.

Exhibit F below:

1 chapter 15 case with three arrows. So, there may be more of
2 these. But are there similar kinds of securities fraud
3 actions that have been filed?

4 MR. NASH: I'm not aware of another securities
5 fraud action, Your Honor. But I do want to make a certain
6 disclosure, and I'm going to read this carefully. With
7 regard to regulatory oversight and the regulatory, you know,
8 framework or dynamic, there is significant regulatory
9 uncertainty in the cryptocurrency industry. Celsius has
10 been working cooperatively with US regulators since before
11 the pause, to respond to information requests and inquiries.
12 Since the pause, Celsius has received additional regulatory
13 inquiries, and the company is continuing to work
14 cooperatively with regulators to address their questions and
15 requests. The investigations relate primarily to compliance
16 with federal and state securities laws.

17 THE COURT: Did the Debtors change their practice
18 at some point, only to make certain programs available to
19 qualified investors?

20 MR. NASH: You know, Judge, I know that happened
21 as of April of 2022, it was no longer possible to be a
22 participant in the Earn program if you were a US-based non-
23 accredited investor. That's right. Any more questions,
24 Your Honor, before I move on?

25 THE COURT: No, why don't you move on, go ahead.

Exhibit G:



Tuesday, April 12th, 2022

Dear Celsians,

Today, we are writing to give our community advance notice of upcoming changes, which will go into effect on April 15, 2022. These changes provide a path forward for our users in the United States to continue holding coins and earning rewards with Celsius.

As we previously have acknowledged, Celsius has been working closely with regulators around the world. It is our intention to be as transparent with our community as possible. More specifically, we have been in ongoing discussions with United States regulators regarding our Earn product.

As a result, there will be changes to the way our Earn product will work for users based in the United States.

Here's how these changes impact you:

- **All coins transferred to Celsius by users in the United States prior to April 15, 2022 will continue to earn rewards. Those existing coins will continue to earn rewards from April 15th and onward, for as long as they remain in their Earn accounts.**
- **On April 15, 2022, Celsius will be launching a new Custody solution for users in the United States.** Your Custody account will serve as the centerpiece of

your home for crypto, providing a secure way to navigate across Celsius' products, including store, access, borrow, spend, earn and grow.

- **New transfers made by non-accredited investors in the United States will be held in their new Custody accounts and will not earn rewards.** Non-accredited investors can continue to swap, borrow, and transfer within their Custody accounts based on their local jurisdiction.
- All coins posted as collateral against a loan that is opened prior to April 15, 2022, will be returned to their Earn accounts when the loan is repaid. Those coins will resume earning rewards for as long as they remain in their Earn accounts.
- **Verified accredited investors in the United States will be able to add new coins into their Earn accounts to earn rewards.** For additional information on how to become an accredited investor, contact us at <https://celsius.network/customer-care> or [read more](#).
- Users located outside of the United States will be unaffected by these changes. They will continue to have access to all of the products and services available to them prior to these changes.
- Watch our [Custody tutorial video](#) to learn more.

Celsius will never stop advocating for financial freedom and we thank our community for their ongoing support. We will continue to provide updates as we engage with regulators and ensure the delivery of our services to our users globally.

If you have questions or require additional assistance, contact us at 1-866-HODL-NOW (1-866-463-5669). Our Customer Care Center is available Monday - Saturday, from 10AM - 11PM EST or contact us at <https://celsius.network/customer-care>

Sincerely,

The Celsius Team

Exhibit H:



Today was Celsius' first appearance before the Court in connection with our reorganization. This is a significant step in the process, and we wanted to share important updates with our community.

We were encouraged to hear that the US Trustee is working quickly to form the creditors committee, the vast majority of which will be our customers. This means that our community will play an instrumental role in negotiating the plan of reorganization we will submit for Court approval.

It is our intention to file a plan that will provide customers with an option to remain long crypto.

In light of the Chapter 11 proceedings, please note the following important updates regarding customer accounts. Rewards are currently paused as of the filing date, June 13th. Additionally, we have paused liquidation and margin call activities with regard to active loans. Please note that these measures may change over time. In the coming days, Celsius will be updating its processes and related communications to reflect these changes.